

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ANNIE M.,

Claimant,

vs.

ALTA CALIFORNIA REGIONAL
CENTER,

Service Agency.

OAH No. 2011100207

DECISION

This matter was heard before Administrative Law Judge Susan H. Hollingshead, State of California, Office of Administrative Hearings (OAH), in Sacramento, California, on November 16, 2011.

The Service Agency, Alta California Regional Center (ACRC), was represented by Camelia Houston, Supervising Counselor and Hearing Designee.

Claimant, who was not present at the hearing, was represented by her sister, Terri Cook.

Oral and documentary evidence was received. At the conclusion of the hearing, the record was closed and the matter was submitted for decision.

ISSUES

Is Claimant's sister required to provide claimant with extensive hours of unpaid personal attendant assistance as a "natural support"?

FACTUAL FINDINGS

1. Claimant is a 58- year- old woman eligible for ACRC services based on a diagnosis of mild mental retardation and seizure disorder. She lives in her own home with support and has been receiving services from ACRC pursuant to the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Section 4500 et seq.)¹

2. On August 31, 2011, ACRC issued a Notice of Proposed Action (NOA) to claimant, advising that “ACRC is denying your request it fund additional personal attendance [sic] support hours in addition to the 200 hours per month currently authorized.”

At the time the NOA was issued, claimant was the party to a separate fair hearing matter seeking ACRC funding of Supported Living Services (SLS)

3. Claimant filed a Fair Hearing Request, dated September 15, 2011, stating that “[claimant] requires 24 hour care and does not have natural support for any of those hours.” The Request contends that “the regional center is demanding that natural support be provided even though they have been informed on numerous occasions in writing that this is not possible.”

4. At that time, claimant was receiving In Home Supportive Services (IHSS) and her sister was her IHSS worker. Some of the IHSS hours were being used to provide supervision while claimant slept. However, ACRC determined that it would “not fund personal attendant services for you during your sleep hours because your support person is able to sleep while you sleep at night rather than providing awake support, and therefore that supervision is considered a natural support. Also, while you may choose to schedule all of your support hours in any manner you choose, ACRC is not obligated to fund additional personal attendant hours because of the manner in which you choose to schedule those hours.”

Claimant’s sister contends that ACRC’s position required her to work an extensive number of hours without pay and that she is not required to do so as a “natural support.”

5. Claimant’s fair hearing matter regarding SLS was settled at mediation and a Notice of Resolution was filed.

Since September 28, 2011, ACRC has been funding SLS through Remi Vista. Claimant receives twenty-four hours per day of care and support through that SLS agency.

6. On October 13, 2011, an informal meeting was held to discuss claimant’s appeal. The participant’s, including claimant’s sister, agreed that services were no longer at issue and that claimant’s needs were being met through Remi Vista. The ACRC Director’s Designee, Camelia Houston, noted in her Informal Meeting Decision dated October 19, 2011, as follows:

¹ Unless otherwise indicated, all statutory references are to the California Welfare and Institutions Code.

Ms. Cook stated that she agrees the issue on appeal is now moot, as Claimant's care needs are currently being met through her SLS services. However, Ms. Cook vehemently disagrees with the statements made in the NOA that was sent by ACRC regarding this issue. Specifically, she disagrees with the notion that her sister was denied additional PA hours based upon Ms. Cook being a "natural support."

Ms. Cook does not agree that she is a "natural support" for her sister, because she was paid to care for her sister as she was appointed the IHSS worker, and did not live with her sister. Ms. Cook's contention is that the protective supervision hours awarded through IHSS (for which she was paid) are not considered a "natural support." Thus, she finds ACRC's assessment of [claimant's] care needs and the number of PA hours ACRC is willing to fund inaccurate.

Again, although she agrees the issue on appeal is now moot, Ms. Cook is requesting that ACRC have the language included in the NOA addressing "natural support" hours "stricken from the record," or that she be given written acknowledgement stating that the ACRC'S consideration of her as a "natural support" is inaccurate in this context.

Ms. Cook is not willing to sign the Notice of Resolution until this particular issue is resolved.

7. ACRC's position "is that when claimant was not receiving SLS, she remained in her home and did not require additional care at night. Due to this fact, she was not allotted additional PA hours for [claimant's] sleep time, specifically. Any supervision provided by Ms. Cook during [claimant's] sleep time was considered "natural support" hours.

8. ACRC explained that the NOA refers to the role or responsibility of the IHSS worker during claimant's sleep hours. At the time the NOA was issued, claimant's sister was her IHSS worker.

9. At this time, claimant's sister is no longer her IHSS worker, nor does she provide any paid care for claimant. Claimant's IPP does not include her sister as a service or support provider, nor does it specify that Ms. Cook is a natural support for claimant.

10. ACRC suggested that "should Ms. Cook agree to resolve the matter by signing the Notice of Resolution form, her signature does not constitute an admission that she is a natural support. She could write on the Notice of Resolution form next to the check box "Other" that she is not admitting to be a natural support."

11. On November 1, 2011, ACRC filed a Motion to Dismiss the Fair Hearing Request on the ground that it was moot because claimant was receiving the services she requested. Claimant opposed the Motion to Dismiss on the ground that this matter still includes the issue as to whether claimant's sister is a "natural support" for claimant.

The Motion to Dismiss was denied because claimant's opposition raised factual issues that precluded dismissal at that time. The matter proceeded to hearing.

LEGAL CONCLUSIONS

1. The Lanterman Act sets forth the regional center's responsibility for providing services to persons with development disabilities. An "array of services and supports should be established...to meet the needs and choices of each person with developmental disabilities...to support their integration into the mainstream life of the community...and to prevent dislocation of persons with developmental disabilities from their home communities." (§ 4501.) The Lanterman Act requires regional centers to develop and implement an IPP for each individual who is eligible for regional center services. (§ 4646.) The IPP includes the consumer's goals and objectives as well as required services and supports. (§§4646.5 & 4648.)

2. Section 4646 provides in part:

(a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy environments. It is the further intent of the legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources."

(b) The individual program plan is developed through a process of individual needs determination. The individual with developmental disabilities...shall have the opportunity to actively participate in the development of the plan.

[(c)] ... [(c)]

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the

consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

3. Section 4646.4, subdivisions (a)(1), (2) and (3), provide:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

- (1) Conformance with the regional center's purchase of service policies, as approved by the department pursuant to subdivision (d) of Section 4434.
- (2) Utilization of generic services and supports when appropriate.
- (3) Utilization of other services and sources of funding as contained in section 4659.

4. Section 4646.5, subdivision (a)(4), states:

(a)The planning process for the individual program plan described in Section 4646 shall include all of the following:

- (4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider and providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

5. Section 4512, subdivision (e), provides:

“Natural supports” means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships, friendships reflecting the diversity of the neighborhood and the community, associations with fellow students or employees in regular classrooms and workplaces, and associations developed through participation in clubs, organizations, and other civic activities.

Section 4648, subdivisions (a)(2), specifies:

In order to achieve the stated objectives of the consumer’s individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. . .

6. The Lanterman Act places a strong priority on providing services and supports to persons with developmental disabilities that take into account the needs and preferences of the individual and family and promotes community integration, independent, productive lives, and stable and healthy environments, in a cost-effective manner. This must be accomplished by decision of the IPP team in the context of what is appropriate for the individual. One consideration for the IPP team is the availability of “natural support” to meet a consumer’s need.

7. Family relationships are considered a natural support. However, what that support may or may not encompass depends on the individual circumstances. While the parent of a minor child has a duty to provide care for that child, the sibling of an adult consumer would not have a similar responsibility. A sibling may well assist in meeting some portion of an adult consumer’s needs, however there would not be a duty to do so.

In determining needs, it is appropriate for the IPP team to determine what services and supports a consumer’s “natural supports” are willing and able to provide. Individuals cannot be forced to be a natural support. What constitutes a natural support depends on the individual circumstances at a specific point in time.

ORDER

The parties agreed that the appeal of claimant's service hours was no longer at issue at the hearing. Therefore that issue is moot and this appeal is dismissed. Future issues involving "natural support" shall be resolved utilizing the guidelines set forth above.

DATED: November 28, 2011

SUSAN H. HOLLINGSHEAD
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days of receipt of the decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)